

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Implementation of Section 309(j)	)	MM Docket No. 97-234
of the Communications Act	)	
	)	
Reexamination of Policy Statement on	)	Gc Docket No. 92-52
Comparative Hearings	)	
	)	
Proposals to Reform the Comparative	)	GEN Docket No. 90-264
Hearing Process	)	

Enclosed are the comments of  
JEM Broadcasting Company, Incorporated, the licensee of KESE (AM) Bentonville, Arkansas.  
JEM is the original applicant and licensee of daytime only KESE and has operated the station  
since commencing operation under program test authority on February 5, 1979. The enclosed  
comments are based on the real world broadcast experience and opinions of Elvis Moody,  
President of JEM and General Manager of KESE.

In these comments, JEM will address the following:

- 1.) Resolution of pending comparative cases filed before July 1, 1997, as well as the role

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auctions could and should play in their resolution.

- 2.) Consideration of the role bidding credits should play in auctions of pre and post July 1, 1997 applications.
- 3.) Other items that should be considered in the resolution process for current and future comparative cases.

#### RESOLUTION OF PRE-JULY 1, 1997 COMPARATIVE CASES

The resolution of pending applications filed before July 1, 1997, should be the commissions first priority. This applicant as well as hundreds of other applicants have found their applications to establish new service sitting for years. Communities have been denied service, and applicants have been placed on hold not knowing how to or what to plan.

While the possibility of hearings is still open for these applicants the result of any hearing process would surely be additional appeals and further lengthen the time before service could begin to the communities effected.

The most straightforward plan would be a simple multi-round auctions, done quickly and to require the successful bidder to quickly construct and commence operation. If the successful bidder should attempt to sell or otherwise transfer the license within 5 years all proceeds over actual expenses should revert to the Federal Treasury, to eliminate once and for all those interested in speculation only and not truly interested in service the community applied for.

If however, the Commission chooses not to pursue a simple auction, the path becomes very difficult. For example, in discussing bidding credits the mere use of race or sex cannot be fairly assessed. For example the Commission in the Notice of Proposed Rulemaking GEN Docket No. 90-264, indicates minority ownership of broadcast stations has, "recently declined

from 3.07 per cent in 1995 to 2.81 percent in 1996-97.” This figure does not take into consideration the vast changes in broadcast ownership wherein individual ownership of all races and sexes has substantially been reduced. Due to the tremendous changes in ownership and the shifting to group, and to both public and privately held corporations, the Commission cannot accurately assess the true ownership of broadcast stations without examining the racial and sexual makeup of stockholders in all corporations that hold broadcast licenses. This is not only impractical, but would be illegal to require racial or sexual information of individuals and their investments.

In today’s business environment the economic survival of any broadcast operator is based on finding a need and filling that need. Any operator of any racial group male or female will choose to serve the greatest unfulfilled need. To suggest that by simply increasing the number of licensees controlled by a specific group will increase service to that group is at best an attempt at social engineering and cannot be supported by facts with documentable results.

If bidding preferences or credits are to be considered, they must have past history that can predict service that will be provided. Past history suggests that no matter what criteria the commission selects, there will be applicants designed to fit that criteria to gain that credit or preference. In many cases this has led to defeating the purpose the preferences or credits were designed to meet in the first place.

This commentator feels strongly that the history of past service to a community considered in the “Daytimer Preference” was the only true factor in the previous comparative criteria that could show actual service or predict the ability or willingness of an applicant to serve a community. The daytimer preference required that the owner and operator of a daytime facility for three years would receive a preference to a new fulltime facility licensed to the same

community. The preference also required the divestiture of the daytime only facility within three years. A daytimer preference should be a major part of the resolution of those pending comparative cases where it is applicable.

Pioneer preferences have been discussed by the Commission in the past. History has shown over and over that an applicant interested in providing new service has petitioned the Commission for rulemaking to establish the channel, spent legal and engineering fees to support that rulemaking and after successfully establishing a new channel find that speculative applicants have come out of the woods to file applications, in many cases spurred on by application mills and consultants suggesting settlements as the reason for applying the application. A pioneer preference or bidding credit would slightly reward the efforts of the party who went to the effort and expense of creating the channel in the first place. A possible alternative would be to allow a bidding credit of the actual expenses incurred in establishing the channel. This would encourage the most efficient use of the spectrum and help establish service in currently unserved areas.

This commentor feels that the Commission should follow the intent of Congress and proceed with auctions, and offer bidding credits for those applicants who qualify for "Daytime and Pioneer Preferences."

These comments are filed by Elvis Moody, President and General Manager of JEM Broadcasting Company, Incorporated, licensee of KESE (AM) at Bentonville, Arkansas. Should there be any questions in connection with the enclosed or reply comments, please address those comments to:

Elvis Moody

JEM Broadcasting Company, Inc.

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Respectfully submitted,

JEM BROADCASTING CORPORATION

By:

  
Elvis Moody